

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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CLARENCE WATSON HERNDON, )  
# 136007, )

Plaintiff, )

v. )

MICHIGAN DEPARTMENT OF )  
CORRECTIONS, )

Defendant. )

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Case No. 1:17-cv-395

Honorable Gordon J. Quist

**REPORT AND RECOMMENDATION**

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. Plaintiff filed his complaint on May 1, 2017, against the defendant Michigan Department of Corrections (MDOC). (Compl. at 3, ECF No.1, PageID. 1). On July 13, 2017, the defendant filed a motion for summary judgment arguing that plaintiff failed to exhaust his administrative remedies. (ECF No. 7). Plaintiff's deadline for filing a response was August 10, 2017. On August 7, 2017 plaintiff filed a motion, styled "Request for Voluntary Dismissal". (ECF No. 10). In that motion, plaintiff is asking the Court to dismiss his complaint without prejudice. (*Id*, PageID.105).

I recommend that the latter motion (ECF No. 10) be treated as a motion to dismiss and that it be granted, dismissing the complaint without prejudice. As this action will terminate the case, the Court need not address any additional issue or motion.

Respectfully submitted,

Dated: August 31, 2017

/s/ Phillip J. Green  
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).